

geographic area for which it is mandatory for use. The geographic area applies to the location where final delivery of the supplies is to be made, or the service to be performed, and not to the location of the ordering office. In most cases, the Republic of Panama will not be within the geographic limitations of the schedule and mandatory use will not be applicable. The mandatory use provisions of FAR 8.4 and 41 CFR 101-26.4 are applicable to Commission offices located in the United States when ordering supplies or services to be delivered or performed in the United States for their own use.

(e) *Lower prices for identical items.* The Commission may purchase products from any source pursuant to the conditions set forth in FAR 8.404-1(e).

PART 3509—CONTRACTOR QUALIFICATIONS

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3509.508-2 Contract clause.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

3509.000 Scope of part.

This part implements FAR part 9 and provides Commission policy and procedures pertaining to: contractor's responsibility; debarment, suspension, and ineligibility; qualified products; and organizational conflicts of interest.

Subpart 3509.1—Responsible Prospective Contractors

3509.104-3 Application of standards.

(c) *Satisfactory performance record.* If the contracting officer invokes the presumption of nonresponsibility required by FAR 9.104-3(c), the contracting officer shall give notice, together with the reasons for invoking the presumption, to the Procurement Executive.

3509.106 Preaward surveys.

3509.106-70 Professional type services preaward surveys.

(a) Generally, preaward surveys are not performed for acquisition of professional type services such as those provided by medical doctors, lawyers or other licensed and/or regulated professions.

(b) To assist in making a determination of responsibility for professional type services, the types of information listed below shall be obtained from the offeror when applicable:

(1) Organizational structure and plan contemplated to accomplish the service;

(2) Summary of experience in performing the same or similar service;

(3) Resumes of key personnel with particular emphasis on academic accomplishments pertinent to the service to be performed;

(4) Evidence of professional liability insurance, or evidence such insurance can be obtained;

(5) Membership in professional organizations;

(6) Information on pertinent state and local licenses; and

(7) Information on the firm or key individuals that reflect their status or professional recognition in their field of endeavor, such as awards and published articles in professional journals or magazines.

(c) When the statement of work includes a review of credentials by the requiring activity, this review should be considered a part of the preaward survey, and other information requested from the offeror should be minimized.

Subpart 3509.2—Qualification Requirements

3509.202 Policy.

(a)(1) The contracting officer shall ensure that the written justification required by FAR 9.202(a)(1) is prepared prior to establishing a requirement for testing or other quality assurance demonstration that must be completed by an offeror before the offeror is awarded a contract.

3509.206 Acquisitions subject to qualification requirements.

3509.206-1 General.

(b) The contracting officer is designated to make the determination required by FAR 9.206-1(b).

Subpart 3509.4—Debarment, Suspension and Ineligibility

SOURCE: 61 FR 3846, Feb. 2, 1996, unless otherwise noted.

3509.400 Scope of subpart.

This subpart supplements, and shall be applied in conformity with, FAR subpart 9.4.

3509.403 Definitions.

Debarring official means the Administrator of the Panama Canal Commission (hereinafter "Commission"). In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed debarment due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the debarring official.

Fact-finding official means a person not employed by the Commission or any agency of the U.S. Government retained at Commission expense to conduct fact-finding under this subpart. The individual must have no prior knowledge of the particular subject matter and no conflict of interest with respect to any of the parties involved in the debarment or suspension action. He shall have knowledge of the laws and regulations governing the federal procurement system, and shall have experience in receiving evidence and formulating findings of fact.

Suspending official means the Commission Administrator. In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed suspension due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the suspending official.

3509.404 List of parties excluded from Federal procurement and non-procurement programs.

(c) The Commission Procurement Executive (hereinafter "PE") shall perform the actions required by FAR 9.404(c).

3509.405 Effect of listing.

The PE is the designee of the agency head for the purposes of FAR 9.405(a) and (d)(2) and (3) and may, upon the written recommendation of the pertinent Head of the Contracting Activity (hereinafter "HCA"), make the determinations referenced therein.

3509.405-1 Continuation of current contracts.

The PE is the designee of the agency head for the purposes of FAR 9.405-1(a) and (c) and may, upon the written recommendation of the pertinent HCA, take the actions referenced therein.

3509.405-2 Restrictions on subcontracting.

(a) The PE is the designee of the agency head for the purposes of FAR 9.405-2(a) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406 Debarment.**3509.406-1 General.**

(c) The PE is the designee of the agency head for the purposes of FAR 9.406-1(c) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406-2 Causes for debarment.

In addition to the causes listed in FAR 9.406-2, the use of a Panama Canal Commission employee or a member of the Commission's Board of Directors as an agent or advocate for a Commission contractor, or prospective contractor, shall be a cause for debarment.

3509.406-3 Procedures.**(a) Investigation and referral.**

(1)(i) Any Commission official or employee who suspects or has knowledge of any conduct, statement, act, or omission of, or attributable to, a Commission contractor or a potential Commission contractor which could justify debarment under FAR subpart 9.4 or this subpart shall immediately report this information to the Commission General Counsel (hereinafter "GC") or to the appropriate contracting officer.

(ii) Any Commission official or employee who suspects or has knowledge that a debarred individual or company has reestablished itself under a new name shall immediately report this information to the GC or to the appropriate contracting officer.

(2) When the GC receives such information he shall refer the matter to the appropriate contracting officer for investigation and shall notify the PE and the pertinent HCA. When the con-

tracting officer receives such information he shall notify the PE and the pertinent HCA.

(3) The contracting officer shall, in coordination with the pertinent HCA, promptly investigate the matter, assemble all relevant information and prepare a written report containing all available evidentiary material, including copies of indictments and conviction notices when applicable, and the names of the owners and officers, as well as any affiliates, of the contractor in question. The written report shall include a recommendation whether a debarment action should be commenced and, if so, shall identify the causes for debarment, see FAR 9.406-2 and 3509.406-2 of this subpart, and identify each company and individual, including divisions of companies and affiliates, which the contracting officer recommends should be specifically named in the action.

(4) The contracting officer shall submit his report to the pertinent HCA and a copy thereof to the PE and the GC. The HCA shall study the report and promptly advise the PE, in writing, whether or not he concurs in the contracting officer's recommendation and shall explain the reasons for his concurrence or nonconcurrence.

(5) The PE shall study the contracting officer's report and the recommendation of the HCA. If the HCA and the PE agree that a debarment action should not be commenced, the PE shall so inform the debarring official and shall prepare a memorandum for record describing and closing the matter. If, however, either the HCA or the PE recommend that a debarment action should be commenced, the PE shall forward the contracting officer's report to the debarring official, together with the recommendation of the HCA as well as the PE's own written recommendation.

(b) Decisionmaking process.

(1) If the debarring official, after reviewing the contracting officer's report and the recommendations of the HCA and the PE, considering fully the provisions of FAR 9.402 and 9.406-1(a), and consulting with the GC, determines there is a reasonable basis to commence a debarment action, the debarring official shall instruct the PE to

sign and send to each specifically named company, individual or affiliate to which the action is to apply, via certified mail, return receipt requested, either:

(i) An informal notice of the Commission's intention to propose debarment, see 3509.406-3(b)(2) of this subpart; or

(ii) A formal notice of the Commission's proposal to debar under FAR 9.406-3(c).

(2) An informal notice of the Commission's intention to propose debarment shall advise the addressee, in writing, of the following:

(i) The issuance under FAR 9.406-3(c) of a formal notice of proposal to debar the addressee is seriously being considered by the Commission;

(ii) The basic factual reasons for the contemplated debarment;

(iii) The causes relied upon under FAR 9.406-2 and 3509.406-2 of this subpart;

(iv) The Commission's procedures governing the debarment process;

(v) The addressee's right to reply to the PE in writing within 21 calendar days of receipt of the informal notice, and show cause why the Commission should not issue, to the addressee, a formal notice of proposal to debar under FAR 9.406-3(c) for the reasons and causes cited by the Commission;

(vi) That, if the PE does not receive a reply from the addressee to the informal notice within 21 calendar days of the addressee's receipt of the informal notice, the Commission will issue to the addressee a formal notice of proposal to debar;

(vii) The effect of the issuance of a formal notice of proposal to debar;

(viii) The potential effect of an actual debarment; and

(ix) That, while the Commission will carefully consider the content of a timely reply to the informal notice, the Commission reserves the right to issue a formal notice of proposal to debar without additional discussion or correspondence.

(3) The PE shall study the timely reply of an addressee to an informal notice and shall forward the reply to the GC and the debarring official with the PE's evaluation and recommendation.

(4) If, after reviewing a timely reply to an informal notice, as well as the views of the PE and the GC, the debarring official determines, considering fully the provisions of FAR 9.402 and 9.406-1(a), that a formal debarment action should commence, the debarring official shall instruct the PE to sign and send a formal notice of proposal to debar to the addressee.

(c) *Notice of proposal to debar.* In addition to the matters listed at FAR 9.406-3(c), a formal notice of proposal to debar shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the proposed debarment.

(d) *Debarring official's decision.*

(1) A submission in opposition to the Commission's formal notice of proposal to debar presented by a contractor, or any named individual or affiliate, shall include information and argument in opposition to the proposed debarment, including any additional specific information or documents that raise a genuine dispute over material facts. The submission shall be addressed to the PE.

(2) If a timely submission in opposition to a formal notice of proposal to debar is not presented by a named contractor, individual or affiliate to whom a formal notice was sent, the PE shall, with respect only to each such contractor, individual or affiliate that failed to present a timely submission, study all the information in the administrative record and shall forward the entire record to the debarring official with an evaluation and recommendation whether to debar the non-responding contractor, individual or affiliate and, if so, for what period of time.

(3) If a timely submission in opposition to a formal notice of proposal to debar is submitted in actions based upon a conviction or civil judgment, the PE shall evaluate all the information in the administrative record, including the submission in opposition, and shall forward these materials to the debarring official with a recommendation whether to debar and, if so, for what period of time.

(4)(i) If a timely submission in opposition to a formal notice of proposal to

debar is presented in actions not based upon a conviction or civil judgment, the PE shall evaluate the formal notice of proposal to debar and the submission in opposition and shall determine, with the advice of the GC, if the submission raises a genuine dispute over any facts material to the proposed debarment. If it does not, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(ii) If, however, the PE determines, in consultation with the GC, that a timely submission in opposition to a formal notice of proposal to debar in actions not based upon a conviction or civil judgment raises a genuine dispute over any fact material to the proposed debarment, the PE shall so advise the contractor, named individual or affiliate, and shall inquire whether a fact-finding hearing is desired. If a fact-finding hearing is not requested by the contractor, named individual or affiliate, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(iii) If a fact-finding hearing is requested, the PE shall appoint a fact-finding official to whom all matters involving disputed material facts shall be referred. The PE will provide the fact-finding official with a copy of the entire administrative record including the submission in opposition. The fact-finding official shall study the Commission's notice(s) of proposal to debar and the submission(s) in opposition, and shall identify specifically the material facts in genuine dispute and so advise the pertinent contractor, named individual or affiliate, as well as the Commission's designated advocate in the Office of General Counsel. A fact-finding hearing shall be scheduled and conducted by the fact-finding official, and shall take place in a Commission facility in Panama unless the fact-finding official determines that fundamental fairness compels the use of another location. The rules governing the fact-finding hearing shall be established by the fact-finding official but

shall conform fully with FAR 9.406-3(b)(2) and (d)(2) and (3).

(5) The fact-finding official shall present written findings of fact and the transcribed record of the hearing, if made, to the debarring official within 21 calendar days from his receipt of the transcript or from the final day of the hearing if no transcript is ordered. The findings shall resolve each material fact previously determined to be in genuine dispute based on a preponderance of the evidence presented.

(6) Upon receiving the complete administrative record and the evaluation and recommendation of the PE or, if there was a fact-finding hearing, upon receiving the hearing record and the findings of fact of the fact-finding official and the evaluation and recommendation of the PE, the debarring official shall, considering fully the provisions of FAR 9.402 and 9.406-1(a), make a final decision whether to impose debarment. If debarment is chosen, the debarring official shall also determine the period of debarment.

(e) *Notice of debarring official's decision.* The debarring official shall promptly notify the contractor and any named individual or affiliate of the final decision in writing by certified mail, return receipt requested.

3509.406-70 Settlement.

(a) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to perform, accomplish or implement such remedial measures or mitigating factors as are listed at FAR 9.406-1(a). The contractor, individual or affiliate shall also agree that its failure to observe any term or condition of the agreement shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a settlement agreement if the proposed debarment is based on a

conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

3509.406-71 Voluntary exclusion.

(a)(1) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to voluntarily refrain, for a specified period of time, from attempting to obtain, and from entering into, any contract, purchase agreement or other form of contractual relationship, regardless of dollar amount, with, as the debarring official may determine, either: (i) the Commission; or (ii) the Commission and one or more, or all, other agencies, departments or entities of the U.S. Government.

(2) A voluntary exclusion will not be reported to the GSA nor appear in the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," and if the contractor, individual or affiliate is currently listed due to a Commission notice of proposal to debar the PE will advise the GSA of the voluntary exclusion and request the immediate cessation of the listing. The contractor, individual or affiliate shall agree that its failure to observe any term or condition of the voluntary exclusion shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a voluntary exclusion agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

3509.407 Suspension.

3509.407-2 Causes for suspension.

In addition to the causes listed in FAR 9.407-2, the cause for debarment identified in 48 CFR (PAR) 3509.406-2 also applies to suspension actions.

3509.407-3 Procedures.

(a) The procedures set forth in 48 CFR (PAR) 3509.406-3 for debarment also apply, insofar as they are compatible with the procedures set forth in FAR 9.407-3, to suspension actions except those procedures identified in paragraph (b) of this subsection.

(b) The following procedures in 48 CFR (PAR) 3509.406-3 do *not* apply to suspension actions: 3509.406-3(b)(1)(i), 3509.406-3(b)(2) through (4) and 3509.406-3(c).

(c) *Notice of suspension.* In addition to the matters listed at FAR 9.407-3(c), in actions not based on an indictment, a notice of suspension shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the suspension.

3509.407-70 Settlement.

Where a suspension is being considered, the suspending official may enter into a settlement agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-70.

3509.407-71 Voluntary exclusion.

Where a suspension is being considered, the suspending official may enter into a voluntary exclusion agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-71.

3509.470 Special notice.

The Commander in Chief, United States Southern Command, shall be notified by the Procurement Executive of the issuance of any Commission notice of proposal to debar and of any debarment or suspension decision made by the debarring or suspending official.

3509.471 Equal application.

These procedures for debarment and suspension apply equally to all firms, individuals and affiliates doing business with the Panama Canal Commission regardless of their nationality, residence or location.

Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.

This subpart establishes Commission policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. It is the Commission's policy to avoid, neutralize, or mitigate organizational conflicts of interest. If the Commission is unable to neutralize or mitigate the effects of a potential conflict of interest, it will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

3509.502 Applicability.

This subpart applies to all Commission contracts except agreements with other Federal agencies.

3509.503 Waiver.

The Commission's General Counsel is designated as the authority to waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Commission's interest. Any request for waiver must be in accordance with FAR 9.503.

3509.504 Contracting officer responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by the contracting officer's own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Commission. In that case, the contracting officer may, with the

approval of the cognizant Head of the Contracting Activity, set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible.

(d) The contracting officer shall, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract, including disclosure of such conflicts of interest with respect to proposed subcontractors.

3509.506 Information sources.

(a) *Disclosure.* At the request of the contracting officer, prospective Commission contractors responding to solicitations or submitting unsolicited proposals shall provide information to the contracting officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraphs (a)(1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, the contractor shall so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations requesting the

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information in paragraph (a) of this section, the Commission will consider any inadvertent failure to provide disclosure certification as a “minor informality” (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* When the contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

3509.507 Procedures.

(a) The contracting officer shall document in writing the resolution of any potential or actual conflicts of interest identified. This documentation shall be reviewed and approved by the General Counsel prior to award. If the organizational conflict of interest cannot be resolved, the contracting officer shall disqualify the prospective contractor from receiving the contract award.

(b) The General Counsel shall review and make the final decision required at FAR 9.507(c)(4) on any contractor request for higher review of the contracting officer’s decision.

3509.508 Solicitation provision and contract clause.

3509.508-1 Solicitation provision.

The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure in solicitations that in the contracting officer’s judgment may be susceptible to organizational conflicts of interest.

3509.508-2 Contract clause.

The contracting officer shall insert the clause at 3552.209-71, Organizational Conflict of Interest, in solicitations and contracts that will include the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure.

PART 3510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
3510.001 Definitions.

3510.004 Selecting specifications or descriptions for use.

3510.004-70 Brand name or equal purchase descriptions.

3510.007 Deviations.

3510.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7644, Mar. 2, 1990, unless otherwise noted.

3510.001 Definitions.

Salient characteristics mean those particular characteristics that specifically describe the essential physical and/or functional features of a brand name product. They are those essential physical and/or functional features which are identified in the specifications as a mandatory requirement which a proposed “equal” product must possess in order for the product to be considered responsive. The term excludes those physical and/or functional features of a brand name product that:

(a) Are not essential to the needs of the Commission, or

(b) Do not affect the suitability of the product for its intended use.

3510.004 Selecting specifications or descriptions for use.

3510.004-70 Brand name or equal purchase descriptions.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words “or equal” may be used only under the conditions indicated in FAR 10.004(b) (2) and (3) and shall be in accordance with this subsection. The office initiating the “brand name or equal” purchase request is responsible for documenting to the contracting officer’s satisfaction that the conditions for its use are valid. Where feasible, all known acceptable brand name products should be referenced.

(b) The words “or equal” should not be added when the contracting officer has determined, with the concurrence of the General Counsel and the signed approval of the cognizant HCA, that only a particular product meets the essential requirements of the Commission.

(c) Brand name or equal purchase descriptions shall include, in addition to those characteristics set forth in FAR